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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Amendment of the Commission's Rules
Concerning Maritime Communications

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PR Docket No. 92-257
RM-7956, 8031, 8352

Comments of the
Industrial Telecommunications Association
and the
Council of Independent Communications Suppliers

The Industrial Telecommunications Association and the Council of Independent Communications Suppliers, pursuant to the Federal Communications Commission's *Second Further Notice of Proposed Rulemaking* in the above-referenced matter, hereby respectfully submits these Comments.¹

I. Preliminary Statement

1. The Industrial Telecommunications Association ("ITA") is a Commission certified frequency advisory committee and coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated between 30-900 MHZ.

2. ITA enjoys the support of a membership that includes more than 6,000 licensed two-way land mobile radio communications users and the following trade associations:

¹ *Second Further Notice of Proposed Rule Making* (FCC 97-217), PR Docket No. 92-257, adopted June 17, 1997, released June 26, 1997, (hereinafter "*Second Notice*").

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Alliance of Motion Picture and Television Producers
Aeronautical Radio, Inc.
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Mining Congress
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
United States Telephone Association

3. The Council of Independent Communications Suppliers ("CICS") is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and rural communities throughout the United States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, communications engineers and consultants. CICS was formed to provide these entities a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the Private Land Mobile Radio Services. CICS is an independent market council of the Industrial Telecommunications Association ("ITA").

II. Background

4. In 1992, CICS filed a petition for rulemaking proposing that the Commission amend its rules to permit the licensing of Industrial and Land Transportation (I/LT) radio service operations on maritime VHF bands in areas away from navigable waters.² In response to this petition, the Commission initiated a rule making proceeding, and requested comment on the CICS

² This petition for rule making was placed on Public Notice on March 6, 1992.

proposal.³ Noting that the I/LT radio frequencies were highly congested, and that maritime frequencies were unused in many land-locked regions of the United States, the Commission adopted rules to permit the inter-service sharing of maritime frequencies in the 156-162 MHz VHF band.⁴ The new rules provided for 9 VHF frequency pairs in the “non-commercial” category of marine channels to be used by I/LT radio licensees, on a primary basis, in areas away from navigable waters.⁵ When adopting these new rules, the Commission stated: “These actions will serve the public interest by promoting the rapid development of new services . . . and better serve the maritime and land mobile customers by increasing the efficiency of spectrum usage and minimizing the regulatory burden while having no impact on the public safety or efficiency of communications.”⁶

5. Since the publication of the *First Report and Order*, many I/LT radio users who would have been unable to obtain licenses because of congestion on the I/LT bands have been able to avail themselves of the maritime channels. These licensees are uniformly located away from navigable waters, and are comprised largely of farmers and other rural businesses.

6. In its *Second Notice*, the Commission proposes to provide operational and regulatory flexibility to maritime licensees by relaxing certain technical standard, and by adopting a

³ See *Notice of Proposed Rule Making and Notice of Inquiry*, PR Docket No. 92-257, 7 FCC Rcd 7863 (1992).

⁴ See *First Report and Order*, PR Docket No 92-257, 10 FCC Rcd 8419 (1995).

⁵ See 47 C.F.R. § 90.283 (IL/T radio licensees can also be licensed on these frequencies on a secondary basis if they met the separation criteria for coastal stations even if they do not meet the separation criteria for navigable waters).

⁶ *First Report and Order*, ¶ 26.

geographic licensing scheme based on United States Coast Guard (“USCG”) Districts. While ITA/CICS has no comment on the Commission’s proposals as they effect maritime coast station licensees, ITA/CICS is gravely concerned that these proposals will effectively end any future inter-service sharing of the maritime frequencies. ITA/CICS believes that this result may have been inadvertent, but in any case is contrary to the public interest as well as the Commission’s stated policy objectives.

III. Comments

a. Proposed geographic service areas

7. In seeking comment on its proposal to license VHF public coast spectrum by geographic areas, the Commission requested input on whether the USCG Districts “provide an appropriate basis for defining service areas used in a geographic licensing approach.”⁷ ITA/CICS believes that the USCG Districts are far too broad and over-encompassing to be appropriate for the licensing of the “nation’s coastline.”

8. The nine Districts cover the entire landmass of the contiguous lower 48 states as well as Alaska and Hawaii, and are not limited to areas near navigable waters. For instance, the Eighth District covers all of North Dakota, South Dakota, Wyoming, Nebraska, Iowa, Colorado, Kansas, Missouri, Kentucky, West Virginia, Tennessee, Arkansas, Oklahoma, New Mexico, Texas, Louisiana, Mississippi, and Alabama, as well as parts of Pennsylvania, Minnesota, Florida, and

⁷ *Second Notice*, at ¶79.

Georgia.⁸ Licensing all of these states -- most of which have few, if any public coast stations -- as a single licensing area, would preclude the licensing of I/LT radio systems on the maritime VHF channels in these states.

9. From ITA's and CICS' perspective this would be a very inefficient use of this spectrum. This is especially true when one recalls that the Commission, just last year, completed a rule making proceeding that made this spectrum available to I/LT radio licensees in rural, land-locked areas. At the time, the Commission stated that licensing I/LT radio systems on maritime frequencies in land-locked areas "would serve the public interest by promoting the rapid development of new services . . . increasing the efficiency of spectrum usage."⁹ Nowhere in the *Second Notice* does the Commission state that the policy objectives served by the licensing of I/LT radio systems in land-locked areas have changed. In fact, the Commission's own view is that "[b]ecause these PLMR licensees operate far from waterways . . . their continued operation does not present a barrier to the development of coastal systems."¹⁰

10. Accordingly, the Commission should adopt geographic areas for the licensing of maritime coast stations that more accurately reflect the nation's coastline. By doing so, maritime VHF bands could remain available for I/LT radio systems in land-locked areas in furtherance of the Commission's stated policy objectives.

11. ITA/CICS further urges the Commission to immediately lift the freeze on maritime

⁸ See 33 C.F.R. § 3.40-1.

⁹ *First Report and Order*, at ¶ 26.

¹⁰ *Second Notice*, at ¶ 82.

VHF applications filed pursuant to Section 90.283 of the Commission's rules.¹¹ Acceptance of these applications, which must be for locations removed from navigable waters and existing coast stations, would have no effect on the future geographic licensing of the nation's coastline, and would ensure the continued efficient use of this otherwise idle spectrum. ITA's experience with the coordination of these frequencies bears this statement out. Over the past year, ITA has coordinated numerous I/LT radio applications in the maritime bands, all of which have been accepted by the Commission, and none of which pose any threat of interference to future coastal stations. ITA remains committed to applying all relevant Commission protocols and procedures in the coordination of these I/LT radio service systems to assure that they present no barrier to the efficient licensing of the proposed wide area coastal radio systems.

b. Treatment of incumbent licensees

12. The Commission has recognized that its geographic licensing proposal will permit licensees to place stations in land-locked areas, and recognizes that I/LT radio users currently licensed on the maritime channels deserve incumbent protection from potential geographic licensees. The Commission has sought comment on the level of interference protection that should be afforded incumbents, and whether incumbents should be afforded additional interference protection which would allow them to expand operations.

13. In seeking comment on the level of interference due incumbents, the Commission has asked whether the interference criteria should be revised to reflect the fact signals will be traveling over land rather than water. I/LT radio licensees operating on the maritime VHF channels are

¹¹ 47 C.F.R. § 90.283.

licensed in accordance with the rules of their individual services.¹² Accordingly, these licensees are subject to the interference standards of the various I/LT radio services.

14. ITA/CICS believes that the Commission should maintain these individual service interference criteria for incumbents, and extend them to any future geographic licensee. So, an incumbent I/LT radio licensee operating on the maritime VHF channels would receive the same level of interference protection from a future geographic licensee, that it would receive from an adjacent I/LT radio licensee. Adopting the existing standards in this context would save the Commission the time and resources required to establish entirely new over-land propagation criteria.

15. The Commission has also sought comment on whether incumbents should be afforded additional interference protection in order to expand their operations. As stated above, ITA/CICS believes that continued licensing of I/LT radio systems on maritime VHF channels in areas far from navigable waters poses no obstacle to the Commission's proposed geographic licensing of the nation's coastline. In fact, the Commission appears to have the same belief insofar as it requests comment on whether the inter-service sharing of these channels should be extended to public safety entities.¹³ If, as urged above, the Commission adopts geographic areas that accurately reflect the nation's coastline, rather than the USCG Districts -- which encompass the entire geographic area of the United States -- incumbent I/LT radio licensees would be able to expand their land-locked systems and adapt to their changing needs. As for the licensing of public safety entities on the maritime VHF channels, ITA/CICS urges the Commission to proceed with

¹² See 47 C.F.R. § 90.283.

¹³ *Second Notice*, at ¶ 86.

caution.

16. The Commission, in ET Docket 97-187, has recently allocated 24 MHz in the 746-806 band to public safety entities in order to ease congestion on the public safety bands and provide increased interoperability among public safety operators. However, insofar as the primary needs of the public safety community are in urban areas, and the available maritime VHF channels are largely in rural areas, public safety entities are less than ideal candidates for the sharing of these frequencies. Also, when first making these channels available for inter-service sharing, the Commission felt that attempting to divide nine channels among several different land mobile entities would be imprudent.¹⁴ ITA/CICS agrees with the Commission's original sentiment: public safety is not a good candidate for inter-service sharing of these bands. I/LT radio licensees have been sharing these frequencies for over a year with great success, and should be allowed to continue to do so. The *First Report and Order* stated that this inter-service sharing served the stated Commission goals of enhanced service provision, and increased spectrum efficiency. ITA/CICS believes that the continued sharing of these channels assures the continued service of these goals.

c. Licensing

17. The Commission proposes to allow "regional licensees to place stations anywhere within its region to serve vessels or units on land, so long as marine-originating traffic is given priority, and incumbent operations are protected."¹⁵ From ITA's and CICS' perspective, the

¹⁴ *First Report and Order*, at ¶ 9.

¹⁵ *Second Further Notice*, at ¶ 84.

Commission's proposal to allow geographic area licensees to place stations on land is entirely reasonable -- given that such systems will be part of an integrated marine service system. The fact that these land based stations are intended to be part of an integrated wide area maritime system indicates that I/LT radio systems on these channels, located far from navigable water, should pose no interference threat. Even if the Commission adopts geographic licensing areas that encompass large tracts of land-locked geography, I/LT radio systems could still be licensed on a secondary basis.

18. Currently, I/LT radio systems licensed on the maritime channels, that meet the separation criteria for coastal stations, but do not meet the separation criteria for navigable waters, are licensed on a secondary basis.¹⁶ The continued licensing of these systems, on a secondary basis, would pose no obstacle to the Commission's proposed geographic licensing of the maritime channels and would ensure the continued efficient use of this spectrum.

d. Regional coverage requirements

19. The Commission points out that under Section 309(j)(4)(B) of the Communications Act it is required to employ performance requirements such as deadlines or coverage rules to prevent the warehousing of spectrum.¹⁷ Among the alternative construction requirements that the Commission suggests are, substantial service to the service area within 10 years, or coverage of 20 percent of the population or 50 percent of the navigable waterways within the region within five years.

¹⁶ See 47 C.F.R. § 90.283.

¹⁷ 47 U.S.C. § 309(j)(4)(B).

20. ITA/CICS' recommends that the Commission adopt construction requirements that are linked to provision of service to the navigable waterways of the geographic area, and at the same time permit the continued licensing of I/LT radio systems in the areas away from the navigable waters -- even if only on a secondary basis.

21. ITA/CICS further recommends that after a period equal to the original construction period, any I/LT radio systems licensed on a secondary basis be converted to primary status. For example, if the Commission were to require geographic licensees to provide service to 50 percent of the coastline population within five years, after ten years any I/LT radio systems licensed on a secondary basis would be converted to primary status. This policy would ensure that geographic licensees provide maritime services where they are needed most -- along the coastline -- but would prevent the inefficient warehousing of spectrum away from navigable waters.

IV. Conclusion

22. The Commission's *Second Further Notice of Proposed Rule Making*, when viewed as a proposal to more efficiently license the nation's coastline, appears reasonable. However, the geographic areas proposed by the Commission are entirely unreasonable. Creating geographic areas for the licensing of marine coast stations that encompass far more land-locked geography than coastline is inherently inefficient, and invite the warehousing of spectrum. In the *First Report and Order*, the Commission promoted spectrum efficiency by adopting inter-service sharing rules that permit the licensing of IL/T radio systems on maritime channels. Now, the Commission would not only eliminate that spectrum efficient use, but would actively promote the warehousing of spectrum in land-locked areas.

23. ITA/CICS strongly urges the Commission to adopt geographic areas that accurately reflect the nation's coastline, and to immediately lift the freeze on I/LT radio service applications that are filed under the Commission's inter-service sharing rules.

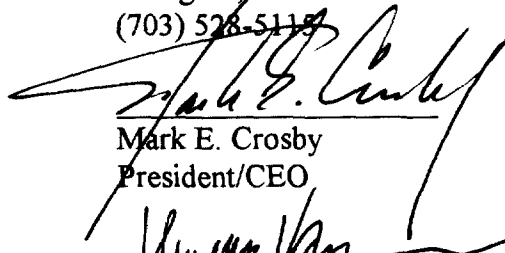
Respectfully Submitted,

Industrial Telecommunications Association

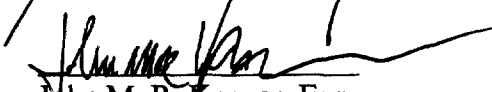
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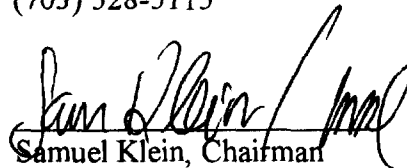
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Samuel Klein, Chairman

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